IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PURCELL BRONSON,	:	
	:	
Plaintiff,	:	NO: 3:CV-99-2116
	:	
vs.	:	
	:	(Judge Caputo)
STAN STANISH and,	:	
LT. DAVENPORT,	:	
	:	
Defendants.	:	

MEMORANDUM

Plaintiff, an inmate at the State Correctional Institution at Dallas (SCI-Dallas), filed the present 42 U.S.C. §1983 action on December 7, 1999. (Complaint, Doc. 1). Defendant Stanish is a physician at SCI-Dallas, where Defendant Davenport serves as a prison guard supervisor. Plaintiff alleges that Defendants used excessive force in removing him from his cell, that the conditions of his subsequent confinement in the Psychiatric Observation Room (POR) amounted to cruel and unusual punishment in violation of the Eighth Amendment, and that Defendants' conduct was a retaliatory response, in violation of the First Amendment, to his having filed other civil actions against the Defendants. (Doc. 1.) Further details of Plaintiff's allegations have been set forth in this court's memoranda of August 17 and August 18, 2000. (Docs. 109, 110.)

On May 22, 2000, Defendant Davenport filed a motion to dismiss Plaintiff's claims on the grounds that Plaintiff has failed to exhaust his

administrative remedies as required by 42 U.S.C. § 1997e(a), and that he has failed to state claims upon which relief can be granted. (Doc. 67.) Magistrate Judge J. Andrew Smyser recommended that Defendant's motions to dismiss be denied, (Report and Recommendation, Doc. 120), and Defendant has not objected to this recommendation.

STANDARD OF REVIEW

When a magistrate judge makes a finding or ruling on a motion or issue, his determination should generally become that of the court unless a specific objection is filed within the prescribed time. See Thomas v. Arn, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985). Where, as here, no objections to the magistrate judge's report are filed, the district court is not required to review the magistrate judge's factual findings or legal conclusions. Id. However, because the authority and responsibility to make a final, informed decision remain with the district judge, it is often appropriate for the court "to afford some level of review" to the magistrate judge's report. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (quotations omitted). Accordingly, this court has previously reviewed the report of a magistrate judge to determine whether there appeared on the face of the record any plain error or manifest injustice. See, e.g., Cruz v. Chater, 990 F.Supp 375, 376-77 (M.D.Pa. 1998); Garcia v. INS, 733 F. Supp. 1554, 1555 (M.D.Pa. 1990).

DISCUSSION

Plaintiff alleges that Defendant Stanish, in order to break a hunger strike

Plaintiff had initiated to protest Stanish's refusal to treat an injury to his right shoulder, ordered Defendant Davenport to forcefully remove him from his cell and take him to the POR. (Doc. 1 ¶ 2.) He claims that Davenport and his men sprayed his eyes with mace, kicked him, and attacked him with an electric shield and stun gun. (Doc. 1 ¶ 4.) Plaintiff further alleges that he was held for two days without clothing, bedding or personal hygiene items, in a POR that was cold and encrusted with feces. (Doc. 1 ¶¶ 13, 15.) According to Plaintiff, Stanish personally harassed him while he was in the POR, telling Plaintiff that he was receiving such treatment because he had filed lawsuits against prison officials; likewise, Davenport allegedly announced to K-Block prisoners that anyone else filing a lawsuit would receive similar treatment. (Doc. 1 ¶¶ 14, 20.)

With respect to Defendant's § 1997e(a) motion to dismiss, Plaintiff has properly alleged that he has exhausted his administrative remedies. (Doc. 1 ¶ 31). Since, for purposes of a motion to dismiss, a court must take as true the allegations in the plaintiff's complaint, Menkowitz v. Pottstown Memorial Medical Center, 154 F.3d 113 (3d Cir. 1998), this court must conclude that Plaintiff has exhausted his administrative remedies. Therefore Defendant's motion to dismiss under § 1997e(a) will be denied.

With respect to Defendant's Rule 12(b)(6) motion to dismiss Plaintiff's challenge to his detention in the POR, it should first be noted that the Cruel and Unusual Punishments Clause of the Eighth Amendment prohibits "punishments which are incompatible with the evolving standards of decency that mark the

progress of a maturing society." Estelle v. Gamble, 429 U.S. 97, 102, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976) (quotations omitted).

> Prohibited are punishments that "involve the unnecessary and wanton infliction of pain, or are grossly disproportionate to the severity of the crime." Rhodes v. Chapman, 452 U.S. 337, 346, 101 S.Ct. 2392, 2399, 69 L.Ed.2d 59 (1981) (citations and internal quotes omitted). Prison conditions may amount to cruel and unusual punishment if they cause "unquestioned and serious deprivations of basic human needs .... [that] deprive inmates of the minimal civilized measure of life's necessities." Id. at 347, 101 S.Ct. 2392. Accordingly, when the government takes a person into custody against his or her will, it assumes responsibility for satisfying basic human needs such as food, clothing, medical care, and reasonable safety. DeShaney v. Winnebago Co. Dep't of Social Svcs., 489 U.S. 189, 199-200, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989). To demonstrate a deprivation of his basic human needs, a plaintiff must show a sufficiently serious objective deprivation, and that a prison official subjectively acted with a sufficiently culpable state of mind, i.e., deliberate indifference. Nami v. Fauver, 82 F.3d 63, 67 (3d Cir. 1996) (citing Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed. 271 (1991)).

Tillman v. Lebanon County Correctional Facility, 221 F.3d 410, 417-18 (3d Cir. 2000).

Here, Plaintiff has alleged facts indicating that the Defendants knew or were deliberately indifferent to the conditions in the POR; that is, he has claimed that Davenport placed him in the cell, and that Standish observed him there. (Doc. 1) Therefore Plaintiff has properly alleged facts that could satisfy the subjective element of the Eighth Amendment test. As to the objective element, this court agrees with the magistrate judge that it cannot be said as a matter of law, that the conditions which allegedly obtained in the POR did not constitute a deprivation of the "minimal civilized measure of life's necessities." Therefore

Defendant's motion to dismiss Plaintiff's cruel and unusual punishment claim for failure to state a claim upon which relief can be granted, will be denied.

With respect to Plaintiff's First Amendment retaliation claim, it is well settled that retaliation for the exercise of constitutionally protected rights is itself a constitutional violation actionable under § 1983. See White v. Napoleon, 897 F.2d 103, 111-112 (3d Cir. 1990). The Supreme Court in Mount Healthy Board of Education v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977), set forth a burden-shifting framework for First Amendment retaliation claims under which the plaintiff has the initial burden of showing that his constitutionally protected conduct was a "substantial" or "motivating" factor in the defendant's decision; then, once the plaintiff has done so, the burden shifts to the defendant "to show by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct." Nicholas v. Pennsylvania State University, 227 F.3d 133, 144 (3d Cir. 2000) (internal quotes omitted). In the context of a motion to dismiss, a plaintiff has properly stated a retaliation claim if he has alleged that he engaged in conduct protected by the constitution, and that subsequently the defendant learned of the conduct and was motivated by it to take action adverse to the plaintiff. See, e.g., Drexel v. Horn, 1997 WL 356484 (E.D.Pa. 1997) (plaintiff properly stated a claim for retaliation where he alleged that defendants placed him in restrictive housing and then transferred him after learning that he had assisted in an investigation of the prison).

In the present case, Plaintiff has alleged that his prior lawsuits against Defendants motivated their decision to forcibly remove him from his cell and confine him in the POR. (Doc.1 ¶ 1.) Further, Plaintiff has alleged that both defendants made statements indicating that his prior lawsuits motivated their actions. (Doc. 1 ¶¶ 14, 20.) This court agrees with the magistrate judge that these allegations suffice to state a First Amendment retaliation claim. Therefore Defendant's motion to dismiss Plaintiff's retaliation claim will also be denied.

Finally, with regard to Plaintiff's claim that excessive force was employed in removing him from his cell, it is clear that the "wanton and unnecessary" use of force on a prisoner violates the Cruel and Unusual Punishments Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5, 112 S.Ct. 995, 998, 117 L.Ed.2d 156 (1992) (citations omitted). The critical inquiry is "whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Id. at 7, 117 L.Ed.2d at 999. In making this inquiry, a court may consider the need for force, whether the force used was proportioned to that need, the threat reasonably perceived by the officials, and any efforts made to temper the severity of the forceful response. Id. However, it is not necessary that the plaintiff prove he sustained a significant injury, lest prison officials be permitted to use "any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." Id. at 9, 117 L.Ed.2d at 1000.

As the magistrate judge observed, Plaintiff alleged that he was sprayed

with mace, kicked and shocked despite the fact that he never resisted the guards' efforts to remove him from his cell. (Doc. 120 at 14-15.) As these allegations suggest that "wanton and unnecessary" force was used during the removal of Plaintiff from his cell, Plaintiff has properly stated an Eighth Amendment excessive force claim. Accordingly, Defendant's motion to dismiss under Rule 12(b)(6) will be denied.

As there is no plain error or manifest injustice in the findings or analysis of the magistrate judge's Report and Recommendation, this court will adopt his Report. Therefore, Defendant's motions to dismiss for failure to exhaust administrative remedies and failure to state a claim upon which relief can be granted will be denied.

An appropriate order will follow.

November 13, 2000
Date

A. Richard Caputo
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PURCELL BRONSON,	:	
	:	
Plaintiff,	:	NO: 3:CV-99-2116
	:	
vs.	:	
	:	(Judge Caputo)
STAN STANISH and,	:	
LT. DAVENPORT,	:	
	:	
Defendants.	:	

ORDER

NOW, this 13th day of November, 2000 IT IS HEREBY ORDERED that:

1. The Report and Recommendation of Magistrate Judge J. Andrew Smyser (Doc. 120) is **ADOPTED**;

3. Defendants' motion to dismiss under § 1997e(a) for failure to exhaust administrative remedies (Doc. 67) is **DENIED**;

3. Defendant's motion to dismiss under Rule 12(b)(6) for failure to state claims upon which relief can be granted (Doc. 67) is **DENIED**;

4. This case is to be recommitted to Magistrate Judge J. Andrew Smyser for further proceedings consistent with this Memorandum and Order.

_____
A. Richard Caputo
United States District Judge

Filed 11/13/2000